

107 FERC ¶ 61,313
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Xcel Energy Operating Companies

Docket No. ER04-419-002

ORDER ON COMPLIANCE

(Issued June 25, 2004)

1. On April 26, 2004, Xcel Energy Services, Inc. (XES) on behalf of the Xcel Energy Operating Companies (Operating Companies)¹, submitted certain proposed variations from the pro forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA). This filing is in response to both Order No. 2003-A² and the Commission's March 19, 2004 order³, which rejected XES's Order No. 2003 compliance filing and directed XES to make a single filing complying with both the March 19 Order and Order No. 2003-A.

2. XES's current compliance filing again proposes several variations from the pro forma LGIP and LGIA that it argues are necessary to accommodate the Colorado state resource planning process. In addition, XES proposes several modifications to

¹ This filing would apply only to interconnection requests with certain of the Operating Companies, namely the Public Service Company of Colorado (PSCo) and Cheyenne Light, Fuel and Power Company (Cheyenne). Interconnection Requests to XES's remaining Operating Companies, Northern States Power Company - Wisconsin (NSPW), Northern States Power Company (NSPC) and Southwestern Public Service Company (SPS) will be administered by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) or the Southwest Power Pool (SPP).

² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), 69 Fed. Reg. 15,932 (March 26, 2004) *reh'g pending*; *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

³ Xcel Energy Services, Inc., 106 FERC ¶ 61,260 (2004) (March 19 Order).

accommodate regional reliability variations to incorporate existing regional reliability standards applicable to members of the Western Electricity Coordinating Council (WECC) into its LGIA. While the Commission accepts XES's reliability variations, subject to modification, it rejects XES's proposed queue modifications as not being consistent with or superior to the Commission's pro forma LGIA and LGIP.

3. This order benefits customers because it ensures that just and reasonable terms, conditions, and rates for interconnection service are applied consistently by all non-independent Transmission Providers, thus encouraging a more competitive energy marketplace.

I. Background

4. In Order Nos. 2003 and 2003-A, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)⁴ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their open access transmission tariffs (OATT) a pro forma LGIP and LGIA. In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the pro forma LGIP and LGIA, as modified by Order No. 2003-A, on or before April 26, 2004. The Commission left it to Transmission Providers⁵ to justify any variation to the pro forma LGIP or LGIA based on regional reliability requirements.⁶ Transmission Providers were required to submit these regional variations to the Commission for approval referring to the relevant reliability standard.

⁴ 16 U.S.C. §§ 824d, 824e (2000).

⁵ The “Transmission Provider” is the entity with which the Generating Facility is interconnecting. The term “Generating Facility” means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the “Interconnection Customer.”

⁶ See Order No. 2003 at P 822-24, 826.

5. Transmission Providers are also permitted to seek variations from the pro forma LGIP and LGIA not made in response to recognized regional reliability requirements. These requests for variation are FPA section 205 filings (rather than compliance filings) and will be approved only if they are "consistent with or superior to" the terms of the pro forma LGIA and LGIP.⁷ A Transmission Provider seeking a "consistent with or superior to" variation must demonstrate that its proposal is consistent with or superior to the pro forma LGIP and LGIA.

6. In its January 20, 2004 filing in compliance with Order No. 2003, XES requested several variations under the "consistent with or superior to" standard. The Commission rejected those requests for variation in its March 19 Order, stating that XES had not demonstrated that these proposed changes were consistent with or superior to the pro forma LGIP and LGIA. However, the Commission also recognized that Colorado law imposes unique requirements on public utilities operating within Colorado and invited XES on compliance to propose a non-discriminatory method of meeting both Commission requirements and Colorado state law.⁸

7. The Commission also rejected XES's proposed regional reliability modifications on the grounds that they did not exactly track the WECC language, but again invited XES to submit a proposal that more closely tracked the WECC's reliability requirements.⁹

8. In the March 19 Order, the Commission directed XES to make a single compliance filing to comply with both the March 19 Order and Order No. 2003-A, which XES has done here.

II. Notice of Filings and Pleadings

9. Notice of Xcel's filing was published in the Federal Register, 69 Fed. Reg. 25382 (2004), with comments, protests, or interventions due on or before May 17, 2004. Holy Cross Electric Association, Inc. and Yampa Valley Electric Association, Inc. (Collectively, Holy Cross/Yampa), jointly filed a motion to intervene and protest.

⁷ Order No. 2003 at P 825.

⁸ March 19 Order at P 24.

⁹ *Id.* at P 30-31.

10. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make the entities that filed them parties to this proceeding.

11. On June 1, 2003, XES filed a motion for leave to answer and answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept XES's answer and will, therefore, reject it.

III. XES's Compliance Filing

12. XES's current filing is in response to both Order No. 2003-A and the Commission's March 19 Order. It both removes the portions of its tariff that the Commission rejected in the March 19 Order and incorporates the changes to the pro forma LGIP and LGIA made in Order No. 2003-A. XES's changes to its tariff that comply with the Order No. 2003-A pro forma are accepted. In addition, XES also proposes specific variations to its tariff that are discussed in below.

A. Proposed Modification to Accommodate Colorado-Mandated Resource Planning Program

1. Proposal

13. XES proposes to add a new section 4.2.2 to the LGIP to facilitate compliance by load serving entities (LSEs) with state-mandated integrated resource planning and competitive bidding requirements in Colorado.¹⁰ Section 4.2.2 creates an optional cluster study process that XES argues will facilitate Colorado's resource planning and competitive bidding procedures and preserve the fundamental queue order requirements of Order No. 2003-A.¹¹

¹⁰ See Colo. Code Regs. § 723-3, Rule 3607(c)(II) (2003).

¹¹ Transmittal letter at 4.

14. XES states that Colorado's Least-Cost Resource Planning (LCP) Rules require certain LSEs¹² to periodically file an LCP Plan that considers the least-cost combination of capacity and energy needed to serve the utility's regulated obligation load customers over a planning period of 20-40 years and a resource acquisition period of 6-10 years.¹³ Colorado LCP Rules 3604(g), 3610, 3612 and 3613 contemplate that the "LSE acquires the future supply-side and demand-side resource needs . . . using a competitive bidding process to select the vendor proposals that will constitute the least-cost portfolio of resources."¹⁴ The LSE is required to take into consideration the fixed and variable costs of the generation or demand-side resource, the cost of electric transmission interconnections, and the cost of the electric transmission upgrades in determining the least-cost portfolio.¹⁵

15. After the Colorado PUC approves the LCP Plan submitted by the LSE, the LSE issues a Request for Proposals (RFP) soliciting bids from generators. Once the LSE receives qualifying bids, it submits those bids to Xcel. Xcel, in turn, creates a position in the interconnection queue for the to-be-determined winning portfolio. Xcel's generation arm evaluates the bids for the lowest combinations of fixed and variable generation costs. Then, Xcel's transmission planning function performs Feasibility and System Impact Studies on the bids as an optional cluster study process, analyzing potential combinations of resources for unique sets of transmission and interconnection upgrade costs. Once the winning resource or resources are identified, losing bids exit the interconnection queue.

16. XES states that XES and PSCo currently conduct resource planning and bidding activities in compliance with the Commission's functional separation and other requirements under 18 C.F.R. Part 37 and commits to conduct the 2004 and future Resource Planning processes in compliance with the Commission's new Order No. 2004 standards of conduct rules.¹⁶

¹² XES states that its subsidiary, PSCo, and Aquila Networks are the two LSEs subject to Colorado's LCP Rules.

¹³ Affidavit of James F. Hill (Hill Affidavit) at 2.

¹⁴ Attachment 1 to Hill Affidavit at 3.

¹⁵ Hill Affidavit at 3.

¹⁶ Transmittal letter at footnote 21, *citing* Standards of Conduct for Transmission Providers, FERC Stats. & Regs. Vol. III, Regulation Preambles ¶ 31,155 (2003), Order No. 2004, 68 Fed. Reg. 69, 134 (2003), *reh'g pending*.

17. XES also provides information on what may happen to its interconnection queue if its provision is rejected.¹⁷ XES expects that its 2004 LCP will show that PSCo has a need for approximately 3600 MW of capacity over the next ten years (of which 1000 MW will be from new generation) and stresses that it is important to clarify this issue in time for the October 2004 RFP process.¹⁸

18. Finally, XES asserts that its language allows entities not subject to a state-regulated resource planning process (such as a cooperative or municipal utility) to use a similar cluster study process to evaluate the results of a competitive bidding process.¹⁹

2. Protest

19. Holy Cross/Yampa state in their joint protest that as cooperatives they are not subject to the least cost solicitation requirements under Colorado law and since the language XES proposes appears to limit participation to entities specified in Colorado law, they can not take advantage of the proposed modifications. These parties request that the XES proposal be modified to allow any load serving entity to conduct a resource solicitation.

20. Additionally, Holy Cross/Yampa express concern that information may be shared between XES and affiliated LSEs that would place non-affiliated companies at a disadvantage. For instance, Holy Cross/Yampa point out that XES publishes injection site recommendations and base case data only every four years. According to Holy Cross/Yampa, an XES-affiliated generator may be given preferential access to more up-to-date information that would allow it to make more efficient siting decisions than a

¹⁷ Hill Affidavit at 4. XES indicates that in 1999 Colorado sought bids for the construction of 1000 MW of capacity. XES's subsidiary, PSCo, received over 50 bids proposing to build over 6000 MW of capacity.

¹⁸ *Id.* at 5.

¹⁹ Transmittal letter at 4.

non-affiliated generator would have access to.²⁰ Holy Cross/Yampa also ask that, in order to efficiently site new generation and avoid these information sharing issues, XES should be required to share this information on an annual basis.

21. Finally, on the subject of standards of conduct, Holy Cross/Yampa are concerned that affiliated generators will have access to better information regarding siting and potential interconnection costs than non-affiliated generators have.²¹

3. Discussion

22. We reject XES's proposed modifications to section 4.2.2. XES has not explained how a generator seeking to interconnect under its proposal would be treated in manner consistent with or superior to a generator seeking to interconnect under the pro forma LGIP.

23. While the Commission continues to be sympathetic to XES's need to comply with Colorado's resource planning process as well as this Commission's interconnection requirements, XES's proposed modifications to its queuing system would put independent generators at a significant disadvantage when compared to independent generators interconnecting outside the XES region.

24. XES has failed to satisfy one of the major concerns expressed by the Commission in its March 19 Order. XES continues to require that Interconnection Customers bidding for, but not receiving a state resource planning contract, drop out of the queue. In fact, the Commission specifically stated in its March 19 Order that "[a]n Interconnection Customer must be able to take part in the state contracting process without danger of losing its queue position should it not win the contract"²²

²⁰ Holy Cross/Yampa argue that since Order No. 2003 requires a demonstration of site control prior to an Interconnection Request being filed, that access to efficient siting information takes on an added importance since non-affiliated generators would not have access to more detailed siting information until the Scoping Meeting-phase of the interconnection process, which takes place after an Interconnection Request is submitted. However, Holy Cross/Yampa fail to note that Order No. 2003 allows for an Interconnection Customer to post a \$10,000 deposit in lieu of demonstrating site control. This allows an Interconnection Customer to retain flexibility in its siting decision until after the Scoping Meeting. *See* Order No. 2003 at P 101-02.

²¹ Holy Cross and Yampa Protest at 7.

²² March 19 Order at P 22.

25. XES's proposal continues to require a generator to choose between participating in the potentially lucrative state resource planning process, but with no guarantee of a queue spot, or foregoing the state resource planning process in exchange for the certainty of a queue position. XES characterizes this as a "business decision" on the part of the Interconnection Customer. However in the Commission's view, this is more akin to purchasing a lottery ticket than making a reasonable business decision. In order to properly develop its business strategy, an Interconnection Customer must be able to plan out the financial details of its project with some certainty. While the state bidding process necessarily carries some level of business risk, XES's proposal that losing generators drop out of the queue unnecessarily raises the stakes by making it an all-or-nothing gamble.

26. XES argues that not excluding losing generators from the queue will lead to an unmanageable queue. However the Commission is not convinced that XES's proposed solution is any better. XES basically suggests sacrificing Interconnection Customer protections to achieve an easier to administer queue. This trade off is not acceptable to the Commission and does not meet the "consistent with or superior to" standard adopted in Order No. 2003 and the Commission will require that XES file within 30 days to remove the revised section 4.2.2 from its tariff.

27. We also have concerns regarding information sharing which support rejecting the proposal. We are concerned that the proposal will place a vertically integrated LSE, such as XES, in a position to receive multiple interconnection studies that could result in XES gaining valuable information that could aid it in discriminating in favor of its own generation, notwithstanding the statement that XES makes that it will follow the provisions of Order No. 2004. However, since we are rejecting XES's proposal on other grounds, we will not address the information sharing concerns raised by Holy Cross/Yampa's protest further.

B. Modification to Appendix to Reference WECC Requirements

1. Proposal

28. XES has removed the formerly proposed variations to section 9 of the LGIA, rejected in the March 19 Order, that required interconnecting generators to comply with the reliability standards or requirements of WECC, which is the applicable reliability council for the PSCo and Cheyenne systems. Here, XES requests clarification from the Commission that PSCo and Cheyenne can require interconnecting generators to comply with the WECC reliability requirements (known collectively as WECC's "Reliability Management System", or "RMS") under section 9 by incorporating such requirements by reference in an appendix to an executed LGIA.

2. Discussion

29. We have previously allowed Transmission Providers to include verbatim WECC's RMS rules as an attachment to the LGIA.²³ The addition of these requirements as an attachment is an acceptable variation from the pro forma LGIA since it reflects an existing regional reliability standard. Therefore we will permit XES to add a copy of WECC's RMS rules as an attachment to the LGIA. The new appendix must follow WECC rules verbatim and should be submitted to the Commission as part of XES's compliance filing.

C. Modification of Title Page to Attachment N to Reference Guidelines

1. Proposal

30. XES is not proposing to include an Appendix 7 to the OATT which was rejected in the March 19 Order. Instead, XES proposes to include on the first page of its interconnection rule a reference to its "Interconnection Guidelines for Transmission Interconnected Producer-Owned Generation Greater than 20 MW" (Interconnection Guidelines). The Interconnection Guidelines describe certain regional business practices and technical requirements applicable to interconnections to XES's transmission system. The Interconnection Guidelines are available as a user guide to interested parties through XES's web site. XES proposes moving the Interconnection Guidelines to the title page to alert OATT users to the fact that the Interconnection Guidelines are available as a reference for new generators contemplating an interconnection to its system.

2. Discussion

31. The Commission will accept XES's inclusion of a reference on its title page to its Interconnection Guidelines, provided that it also state that XES's OATT controls in the event that there is a conflict between the Guidelines and the OATT.²⁴

²³ See, e.g. Arizona Public Service Company, *et al.*, 107 FERC ¶ 61,255 at P 20, 28 (2004).

²⁴ See Order No. 2003-A at P 399.

D. Effective Date

32. XES requests the Commission make its filing here effective as of April 26, 2004, the date of the instant compliance filing.²⁵ The portions of XES's tariff that are accepted for filing are conditionally accepted, subject to XES submitting a compliance filing as discussed below, to be effective April 26, 2004.

The Commission orders:

(A) Xcel's April 26, 2004 Compliance Filing is conditionally accepted in part, and denied in part. The acceptance is made effective April 26, 2004, as discussed in the body of this order.

(B) Xcel is hereby directed to submit compliance filing(s), as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

²⁵ Transmittal letter at 2.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Xcel Energy Operating Companies Docket No. ER04-419-002

(Issued June 25, 2004)

KELLY, Commissioner, dissenting in part:

I believe that the Commission should give Transmission Providers the flexibility to comply with existing state resource planning processes and competitive bidding programs. Colorado's Resource Planning Process requires LSEs regulated by the state to file a Least Cost Resource Plan approximately every four years. The plan evaluates the utility's capacity and energy needs over a planning period of 20-40 years and a resource acquisition period of 6-10 years. Once the state approves the plan, the LSE must use a competitive bidding process to acquire the future supply and demand side resources that represent the least cost portfolio of resources.

The conflict between the Commission's requirements under Order No. 2003 and the state process arises because the state requires a calculation of the cost of interconnecting these resources and the cost of the improvements necessary to deliver the output of the winning bids to native load customers. These types of cost studies are prepared once a project is placed in the interconnection queue.

Under Order 2003, each proposed project has its own queue position and the cost of interconnection will be based on the project's ranking in the queue. This ranking assumes that each project will go forward, however, this is a false assumption in this case because the competitive process naturally results in the non-winning bidders' projects dropping out of the queue.¹ This presents problems for both the LSE and the other generators. The LSE will have no valid method of comparing costs of each project

¹ During the 1999 solicitation process, for example, XES received substantially more bids for new generation than it actually needed.

because the studies to determine those costs will falsely assume that each project will be built.

In addition, this will result in inefficiencies for other generators in the queue that are not taking part in the state process. If the first five queue positions are held by generators competing in the bidding process, Order 2003 requires the 6th generator to assume that all five projects are viable. This assumption will create study results and cost estimates that are unreliable and will leave the queue clogged with “zombie projects” that will never be built. XES’s proposal avoids this situation by assigning the LSE one queue spot that will be available to the generator that submits the winning bid in the state’s competitive bidding process.

The majority believes that XES’s proposal departs from the provisions of Order No. 2003 in ways that could place generators at a disadvantage. I disagree. I do not see any way that independent generators are disadvantaged by XES’s proposal. Absent the Colorado law, if XES determined that it was in need of additional generation capacity and decided, on its own, that it wished to build this capacity itself, XES would be completely within its rights to reserve the next available queue position for the generation project it chooses to build. The only difference here is that the Colorado law requires XES to bid out the project and choose the most economic alternative it receives, no matter who proposes it, instead of leaving it to XES to decide whether it will develop a project itself. The queue position reserved for XES would be the same in either case and would not jump ahead of the queue requests made by others before XES enters the queue. Under these conditions, I view this proposal as a definite step forward from the baseline established by Order No. 2003.

Therefore, I disagree with this order to the extent it rejects XES’s proposal to modify Order 2003’s queuing and clustering procedures to accommodate the Colorado-mandated resource planning program. I believe XES has made a good faith effort to accommodate the state’s concerns with a proposal that is consistent with or superior to the pro forma LGIP.

	<hr/> Sudeen G. Kelly
--	-----------------------

